

REMARKS

By way of this Response, claims 9 and 43 are amended, claims 14, 47, 54, and 55 are canceled and new claims 59-62 are added. Accordingly, claims 9-11, 13, 15-17, 43-46, 48-53, and 56-62 are pending in this patent application. Favorable reconsideration of the application and allowance of all of the pending claims are respectfully requested in view of the following remarks.

In the "Response to Arguments" section, the Office Action states that the examiner disagrees with the Applicants' arguments and position with respect to *Bean* as set forth in the recent Response as "the axis passes through the ear portion, therefore is extending along the ear portion."

In the Office Action, claims 9-11, 14-17, 43-45, 47-53, and 55-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,149,383 ("*Bean*"). In addition, claims 13, 46, and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bean* in view of U.S. Patent No. 6,499,146 ("*Bavetta*"). Applicants respectfully submit that *Bean* and *Bavetta* fail to teach or suggest the invention as recited in the pending claims.

Regarding independent claim 9, Applicants submit that *Bean* fails to teach or suggest at least "the ear portion having an outer side and an inner side opposite to the outer side, the inner side being proximate to a head of a wearer of the ear warmer and the outer side being oriented away from the head of the wearer, ... and each of the first axis and the second axis being spaced apart from and extending along the inner side of extends along the ear portion" as recited in amended independent claim 9. Applicants have amended claim 9 to further clarify the location of the first axis and the second axis in the claim. The Office Action states that the axis in *Bean* passes through the ear portion of the ear muff in *Bean*. Accordingly, Applicants submit that *Bean* fails to teach or suggest that each of the first axis and the second axis is spaced apart from and extending along the inner side of the ear portion. Applicants submit that independent claim 9 is allowable and that each of the dependent claims 10-11, 13, and 15-17 is allowable for its dependency from claim 9 and for the additional features that it recites.

Regarding dependent claim 11, the Office Action states that *Bean* tapers from the bottom of the first portion to the second portion. However, that interpretation of thickness from *Bean* is inconsistent with the statement regarding claim 9 in the Office Action that “the thickness of the arrow at the first portion being thinner than the thickness of the second portion at the arrow in the second portion.” If the rejection of claim 9 is maintained, Applicants request more than a conclusory statement in the next communication explaining the inconsistent rejection of “thickness” as claimed.

Regarding dependent claim 13, Applicants submit that *Bavetta* fails to remedy the deficiency of *Bean* with respect to independent claim 9. Accordingly, Applicants submit that dependent claim 13 is allowable.

Regarding independent claim 43, Applicants respectfully submit that *Bean* fails to teach or suggest the invention as recited in amended independent claim 43. In particular, Applicants submit that *Bean* fails to teach or suggest at least “the ear portion having an outer side and an inner side opposite to the outer side, the inner side being proximate to a head of a wearer of the ear warmer and the outer side being oriented away from the head of the wearer, ..., and each of the first axis and the second axis extends along inner side of the ear portion and does not pass through the ear portion” as recited in claim 43. As noted above, the Office Action states that the axis in *Bean* passes through the ear portion in *Bean*. Accordingly, Applicants further submit that each of the dependent claims 44-46, and 48-50 is allowable for its dependency from claim 43 and for the additional features that it recites.

Regarding dependent claim 46, Applicants submit that *Bavetta* fails to remedy the deficiency of *Bean* with respect to independent claim 43. Accordingly, Applicants submit that dependent claim 13 is allowable.

Regarding independent claim 51, Applicants respectfully submit that *Bean* fails to teach or suggest the invention as recited in claim 51. In particular, Applicants submit that *Bean* and *Bavetta* fail to teach or suggest at least “the first portion of the ear portion having a length and being curved about a first axis, the first axis being substantially orthogonal to the longitudinal plane of the ear portion, the second portion of the ear portion having a length and being curved

about a second axis, the second axis being substantially orthogonal to the longitudinal plane of the ear portion, the second axis being spaced apart from the first axis, the length of the first portion of the ear portion and the length of the second portion of the ear portion in sum being at least half the length of the ear portion, and each of the first axis and the second axis is oriented so that it does not intersect with the ear portion" as recited in claim 51 (emphasis added). The fact that the Office Action states that axis in *Bean* passes through the ear portion in *Bean* is inconsistent with the rejection of claim 51 and in particular, the feature that "each of the first axis and the second axis is oriented so that it does not intersect with the ear portion." Accordingly, Applicants further submit that each of the dependent claims 52-53, 56-58 is allowable for its dependency from claim 51 and for the additional features that it recites.

Regarding the rejection of dependent claim 54, Applicants have canceled claim 54, thereby rendering the rejection of that claim in view of *Bean* and *Bavetta* moot.

Applicants have added new claims 59-62 which depend, directly or indirectly, from independent claim 9. Applicants respectfully submit that each of the new claims 59-62 is allowable for its dependency from claim 9 and for the additional features that it recites.

In view of the foregoing, the Examiner is respectfully requested to find claims 9-11, 13, 15-17, 43-46, 48-53, and 56-62 to be in condition for allowance. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Applicant hereby petitions for any extension of time that may be necessary to maintain the pendency of this application. The Commissioner is hereby authorized to charge payment of any additional fees required for the above-identified application or credit any overpayment to Deposit Account No. 05-0460.

Respectfully submitted,

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